

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Susan Searle

Plaintiff,

v.

RGS Financial, Inc.,

Defendant.

Civil Action No.: 1:13-cv-11916-FDS

1st AMENDED VERIFIED COMPLAINT

Plaintiff Susan Searle sues Defendant RGS Financial, Inc. for pecuniary damages, punitive damages, as well as other relief and states:

JURISDICTION

1. This action arises out of the Defendant's violations of the Fair Credit Reporting Act (FCRA) 15 USC § 1681 et seq; Massachusetts Fair Credit Reporting Act (MGL c. 93 § 50-68) et seq; Fair Debt Collection Practices Act (FDCPA) 15 USC § 1692 et seq.; and Massachusetts Consumer Protection Act (MGL c. 93A § 2) et seq; by the Defendant's attempts to collect a consumer debt.
2. Jurisdiction of this court arises under 28 USC § 1331, and 15 USC § 1692k(d).
3. Venue is proper in this District pursuant to 28 USC § 1391(b), in that the Plaintiff resides in this District, the Defendant transacts business in this District, and a substantial part of the events or omissions giving rise to this action occurred in this District.
4. This Court has jurisdiction.

PARTIES

5. The Plaintiff, Susan Searle ("Plaintiff"), is an adult individual residing in Merrimac, Massachusetts, and is a "consumer" as the term is defined by 15 USC § 1692a(3).
6. The Defendant, RGS Financial Inc. ("RGS"), is a Texas business entity that is registered to do business in Massachusetts with principle address of 1700 Jay Ell Dr., Suite 200, Richardson, TX 75081.
7. Defendant regularly uses the mail, telephone and electronics devices in a business with the principal purpose of which is the collection of debts.
8. Defendant regularly makes inquiries into credit reporting agencies, the primary purpose of which is debt collection.
9. Defendant regularly collects or attempts to collect debts for other parties.
10. Defendant is a "debt collector" as the term is defined by 15 USC § 1692a(6).
11. Defendant was acting as a debt collector with respect to the collection of Plaintiff's alleged debt.

FACTUAL ALLEGATIONS

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
13. The Plaintiff reviewed a copy of her Credit Report from Experian ("Credit Report"), a credit reporting agency.

PARTIES

5. The Plaintiff, Susan Searle ("Plaintiff"), is an adult individual residing in Merrimac, Massachusetts, and is a "consumer" as the term is defined by 15 USC § 1692a(3).
6. The Defendant, RGS Financial Inc. ("RGS"), is a Texas business entity that is registered to do business in Massachusetts with principle address of 1700 Jay Ell Dr., Suite 200, Richardson, TX 75081.
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11. Defendant was acting as a debt collector with respect to the collection of Plaintiff's alleged debt.

FACTUAL ALLEGATIONS

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
 13. The Plaintiff reviewed a copy of her Credit Report from Experian ("Credit Report"), a credit reporting agency.
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14. The Defendant made a Credit Report Inquiry ("Inquiry") into the Plaintiff's Credit Report on 12/18/2012. (See Exhibit A)
 15. The Defendant did not ask for the Plaintiff's permission to inquire into her Credit Report.
 16. The Plaintiff did not authorize the Defendant to inquire into her Credit Report.
 17. The Defendant's Inquiry, which occurred on 12/18/2012, obtained information concerning the Plaintiff, by way of gaining access to Experian's Consumer Information Database(s) ("Experian's Databases").
 18. The Defendant gained access to Experian's Databases without a permissible purpose, which therefore mislead and falsely represented to Experian, the Defendant's Inquiry as for a permissible purpose.
 19. Defendant sought to collect from Plaintiff an alleged debt arising from transactions incurred for personal, family or household purposes.
 20. The Defendant's Inquiry is a means to attempt to collect a debt.
 21. The Plaintiff discovered her right to sue on 5/1/2013.
 22. The Plaintiff disputed the Defendant's Inquiry with Experian dated 5/25/2013. (See Exhibit B)
 23. The Plaintiff sent the Defendant a Commencing Lawsuit Notice dated 6/1/2013. (See Exhibit C)
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24. The Defendant is unresponsive to the Plaintiff's Commencing Lawsuit Notice as of the first filing of the original Verified Complaint on 8/9/2013.
25. The Plaintiff has not communicated with the Defendant prior to the sending of the Commencing Lawsuit Notice.
26. The Plaintiff does not have any obligation to the Defendant.
27. The Plaintiff does not have any contract with the Defendant.
28. The Plaintiff has not requested credit from the Defendant.
29. The Plaintiff has not been offered credit by the Defendant.
30. The Defendant has been unwilling to settle this case for a reasonable monetary amount as of the filing of this 1st amended verified complaint.
31. All Counts are within the Statute of Limitations.

COUNT I
VIOLATIONS OF THE FDCPA 15 USC § 1692, et seq.

32. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
 33. The Defendant's conduct violated 15 USC § 1692e(10) in that the Defendant employed false representation and deceptive means to attempt to collect a debt.
 34. The Defendant's conduct violated 15 USC § 1692e(10) in that the Defendant used false representation and deceptive means to obtain information concerning a consumer.
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WHEREFORE the Plaintiff moves the Court to enter an order granting judgment for money damages against the Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT II
VIOLATION OF THE MASSACHUSETTS CONSUMER PROTECTION ACT,
MGL c. 93A § 2, et seq.

35. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The Defendant employed unfair, deceptive acts to collect a debt, in violation of MGL c. 93A § 2.

37. The Defendant's failure to comply with these provisions constitute unfair and deceptive acts under MGL c. 93A § 9 and, as such, the Plaintiff is entitled to double or treble damages as well as reasonable attorney's fees.

WHEREFORE the Plaintiff moves the Court to enter an order granting judgment for money damages, as well as reasonable attorney's fees against the Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT III
VIOLATION OF THE FAIR CREDIT REPORTING ACT 15 USC § 1681, et seq.

38. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

39. The Defendant's conduct willfully and negligently violated 15 USC § 1681b(a)(2) in that the Defendant made an Inquiry into the Plaintiff's Credit Report without a Permissible purpose.

WHEREFORE the Plaintiff moves the Court to enter an order granting judgment for money damages against the Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT IV
VIOLATION OF THE MASSACHUSETTS FAIR CREDIT REPORTING ACT
MGL c. 93 § 50-68, et seq.

40. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

41. The Defendant's conduct willfully and negligently violated MGL c. 93 § 68 in that the Defendant failed to comply with the provisions of Sections fifty through sixty-seven of said chapter, and that constitutes Unfair Trade Practice.

42. The Defendant's failure to comply with these provisions constitutes willful and negligent non-compliance for Unfair Trade Practices, under MGL c. 93 § 63 and MGL c. 93 § 64, as such this entitles Plaintiff to double or treble damages as well as reasonable attorney's fees.

WHEREFORE the Plaintiff moves the Court to enter an order granting judgment for money damages, as well as reasonable attorney's fees against the Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

DEMAND FOR RELIEF


WHEREFORE, the Plaintiff demands that judgment be entered against the Defendant for:

1. Statutory damages of \$1,000.00 for violations pursuant to 15 USC § 1692k(a)(2)(A);

2. Statutory damages of \$1,000.00 for violations pursuant to 15 USC § 1681n(b);
3. Punitive damages pursuant to 15 USC § 1681n(a)(2);
4. Double or treble damages as well as reasonable attorney's fees pursuant to MGL c. 93A § 9(3)(A);
5. Costs of litigation and reasonable attorney's fees pursuant to 15 USC § 1692k(a)(3);
6. Removal of Defendant's Inquiry from the Plaintiffs Credit Report; and
7. Together with such other and further relief as the Court may deem reasonable and just under the circumstances.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Amended Date: 3/3/2014

Respectfully Submitted,
By: 
Susan Searle
9 Prospect St.
Merrimac, MA 01860
RespondRS@gmail.com

VERIFICATION

STATE OF MASSACHUSETTS

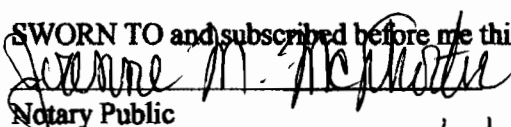
COUNTY OF ESSEX

BEFORE ME personally appeared Susan Searle who, being by me first duly sworn and identified in accordance with Massachusetts law, deposes and says:

1. My name is Susan Searle, Plaintiff herein.
2. I have read and understood the attached foregoing complaint filed herein, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

SWORN TO and subscribed before me this 5th day of March 2014.


Notary Public

My Commission Expires: 9/5/14


Susan Searle, Affiant

EXHIBIT A

EXPERIAN - FIDELITY FUND REPORT

Exhibit A page 1 of 2

Address Identification Number: [REDACTED]

Status: [REDACTED]

Status Details: [REDACTED]

Date Opened: [REDACTED]

Type: [REDACTED]

Credit Limit/Original Amount: [REDACTED]

Reported Since: [REDACTED]

Terms: [REDACTED]

High Balance: [REDACTED]

Date of Status: [REDACTED]

Monthly Payment: [REDACTED]

Recent Balance: [REDACTED]

Last Reported: [REDACTED]

Responsibility: [REDACTED]

Recent Payment: [REDACTED]

Creditor's Statement: [REDACTED]

Payment History: [REDACTED]

Record of Requests for Your Credit History

[back to top](#)

Inquiries Shared With Others

We make your credit history available to your current and prospective creditors and employers as allowed by law. Experian may list these inquiries for up to two years.

The section below lists all of the companies that have requested your credit history as a result of action you took, such as applying for credit or financing or as a result of a collection. The inquiries in this section are shared with companies that receive your credit history.

[REDACTED]

Address: [REDACTED]

Date of Request: [REDACTED]

[REDACTED]

Address Identification Number: [REDACTED]

Comments: [REDACTED]

Inquiries Shared Only With You

Exhibit A Page 2 of 2

You may not have initiated the following inquiries, so you may not recognize each source. We report these requests to you only as a record of activities, and we do not include any of these requests on credit reports to others.

We offer credit information about you to those with a permissible purpose, for example to:

- other creditors who want to offer you preapproved credit;
- an employer who wishes to extend an offer of employment;
- a potential investor in assessing the risk of a current obligation;
- Experian Consumer Assistance to process a report for you;
- your current creditors to monitor your accounts (date listed may reflect only the most recent request);
- an end user to complete your mortgage loan application.

These inquiries do not affect your credit score.

RGS FINANCIAL INC

Address:
1700 JAY ELL DR STE 200
RICHARDSON TX 75061
No phone number available

Date of Request:
12/18/2012

[REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Date of Request:

[REDACTED]

[REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Date of Request:

[REDACTED]

[REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Date of Request:

[REDACTED]

[REDACTED]

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Date of Request:

[REDACTED]

EXHIBIT B

Susan Searle
9 Prospect St.
Merrimac, MA 01860

5/25/2013

Experian
PO Box 9701
Allen, TX 75013
Attn: Legal Department

I am disputing the following items for legitimacy and accuracy, which coincidentally are violations of Federal FCRA and M.G.L. FCRA Consumer Protection Statutes, et al:


1. *
2. (
3. /
4. /
5. /

I did not authorize the following inquiries, nor had I been involved in any extension of credit for the following. I know and believe that they were not obtained with a permissible purpose. Please remove them.

- | | |
|----------------------|-------------------------------|
| 1. | Inquired on _____ |
| 2. RBS FINANCIAL INC | Inquired on <u>12/18/2012</u> |
| 3. | Inquired or: _____ |
| 4. | Inquired on _____ |
| 5. | Inquired c. _____ |
| 6. | Inquired on _____ |
| 7. | Inquired or _____ |
| 8. | Inquired on: _____ |
| 9. | Inquired on _____ |

Please provide me with a description of the reinvestigation procedure for all items. Please provide me with the source of information for all items. Please send me all the information in my consumer file, so I may accurately document all necessary proceedings. Please send me an updated copy of my credit report.

I intend to pursue legal action if the above mentioned information is not corrected to maximum accuracy as required by law. Thank you for your cooperation in advance.

Sincerely,

Susan Searle
SSN#
MA Drivers License#

*** (I am unable to provide photo copies of these at this time due to hardship) ***

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Experian
 PO Box 9701
 Allen, TX 75013
 Attn: Legal Dept.

A. Signature
 X *[Signature]* ☐ Agent ☐ Addressee
 B. Restricted Delivery ☐ Yes ☒ No
 C. Date of Delivery
 D. Is delivery restricted? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (Transfer from service label) 7033 2970 0001 6143 9489

PS Form 3811, February 2004 Domestic Return Receipt 100999-02-10-1040

U.S. Postal Service
 CERTIFIED MAIL RECEIPT
 (Domestic Mail Only - Use for Registered Mail and Restricted Delivery)

PSN: 7033 2970 0001 6143 9489

POSTAGE PAID PERMIT NO. 511
 ALLEN, TX

Postage \$
 Certified Fee \$
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)
 Total Postage & Fees \$

Sent to
 Experian
 PO Box 9701
 Allen, TX 75013

MAY 28 2013
 NH 03844

Postmark

EXHIBIT C

Susan Searle
9 Prospect St.
Merrimac, MA 01860

6/3/2013

RGS Financial Inc.
1700 Jay Ell Dr.
STE 200
Richardson, TX 75081

Commencing Lawsuit Notice

To whom it may concern at RGS Financial, Inc.,

I send this letter prior to filing a lawsuit against you. This is your opportunity to remedy violations of the Fair Credit Reporting Act (FCRA) 15 USC § 1681 et seq; Massachusetts Fair Credit Reporting Act (M.G.L. c 93 § 50-68); Fair Debt Collection Practices Act (FDCPA) 15 USC § 1692 et seq.; and Massachusetts Consumer Protection Act (M.G.L. c 93A § 2) et seq.

I recently reviewed a copy of my Experian Credit Report which showed a credit inquiry by your company that I did not knowingly authorize. I understand that you are not authorized to inquire into any of my credit reports without a permissible purpose. The inquiry was made on 12/18/2012.

You have my absolute full attention from this moment forward, and if you do not correspond promptly, I fully intend to pursue my remedy in federal court within 15 days from the date I receive the Certified Mail return receipt. Refer to the draft Complaint I have provided for your understanding.

Administrator Notice

For the respectful consideration of settlement outside of court, call my Financial Administrator Ryan Searle at 978-423-5337, during the reasonable business hours of 3:30pm to 8:30pm EST; or email him directly at any time at RespondRS@gmail.com. I have empowered him to conduct settlement and payment of this/and any other matter that may arise between us. You are instructed not to use this phone number or email address for any other purpose except to address and settle the foregoing.

Sincerely,



Susan Searle

☒ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
☒ Print your name and address on the reverse so that we can return the card to you.
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 RGS Financial, Inc.
 c/o National Corporate Research, LTD.
 10 Milk Street
 Suite 1055
 Boston, MA 02108

A. Signature: *[Signature]*
 X ☒ Agent ☐ Addressee
 B. Received by (Printed Name): *[Signature]*
 C. Date of Delivery: 6/3/13
 D. Is delivery address different from Item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

2. Service Type:
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ G.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number: 7012 2210 0002 4388 8758
 (Transfer from service label)

PS Form 3811, February 2004 Domestic Return Receipt 10000-00-00-1000

U.S. Postal Service
 CERTIFIED MAIL RECEIPT
 (Domestic Mail Only. For international, use PS Form 3811)

For details on this form, visit us at www.usps.com

POSTAGE PAID PERMIT NO. 1000
 BOSTON, MA 02108

Postage	\$	
Certified Fee	\$	
Return Receipt Fee (Endorsement Required)	\$	
Restricted Delivery Fee (Endorsement Required)	\$	
Total Postage & Fees	\$	

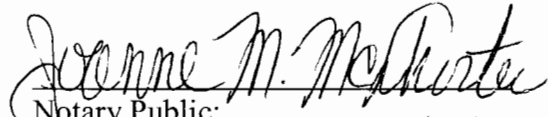
HANDED TO PAID
 NH 03844
 JUN 4 3 2013
 USPS

RGS Financial, Inc. c/o National Corporate Research
 10 Milk Street Suite 1055
 Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 5th day of March 2014, before me, the undersigned notary public, personally appeared Susan Searle proved to me through satisfactory evidence of identification, which was client (source of identification), to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it as his/her free act and deed.


Notary Public:
My Commission Expires: 9/5/14

JOHN J. O'Connor, Esq. Peabody & Associates LLP
400 Atlantic Ave.
Boston, MA 02210

5th day of March, 2014

Susan Searle

Attorney at Law

Peabody & Associates LLP

STATE OF MASSACHUSETTS

SUDBURY COUNTY

JOHN J. O'Connor, Esq. Peabody & Associates LLP, by and through the undersigned, do hereby certify that the foregoing is a true and correct copy of the original document.